

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR08-126

CLEDIA GRAVES, JR.,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

Opinion Delivered DECEMBER 31, 2008

APPEAL FROM THE PHILLIPS
COUNTY CIRCUIT COURT,
[NO. CR-2005-24]

HONORABLE HARVEY L. YATES,
JUDGE

AFFIRMED

KAREN R. BAKER, Judge

Appellant Cledia Graves, Jr., challenges the trial court's revocation of his probation asserting two points of error: (1) The trial court erred in allowing a witness to testify about certain documentary evidence; and (2) Appellant's right to due process was violated with the trial court's introduction of certain exhibits. Appellant failed to challenge one of the alleged violations of the terms of his probation. Accordingly, we find no error and affirm.

On July 25, 2007, the State filed a petition for revocation alleging that the defendant had violated the terms of his probation. Appellant had been placed on probation for five years on April 1, 2005, after being found guilty of the charges of false imprisonment in the first degree, aggravated assault, and terroristic threatening in the first degree, all felonies. The charges leading to his conviction arose out of acts committed against his mother, Ruthie Graves, and his brother, Clifton Graves.

The petition for revocation alleged, among other things, that appellant had failed to pay any

of his fines or costs and that he failed to participate in supervised probation, failed to report to his probation officer, failed to pay the required probation fee, and failed to comply with the instructions given by his probation officer.

The trial court revoked appellant's probation, finding that appellant had inexcusably failed to comply with the terms of his probation. Included in those findings were that appellant had failed to participate in supervised probations as required; failed to report to his probation officer as required; failed to participate in a drug rehabilitation program as required by his probation officer; failed monthly drug tests, having tested positive for cocaine and marijuana on four (4) occasions, such illegal drug use being admitted by appellant; failed to complete his community service hours; and, failed to otherwise comply with the instructions given by his probation officer.

The State has the burden to prove a violation of a condition of probation by a preponderance of the evidence. *Bedford v. State*, 96 Ark. App. 38, 237 S.W.3d 516 (2006). This burden is not as great in a revocation hearing; therefore, evidence that is insufficient for a criminal conviction may be sufficient for revocation. *Id.* If a court finds by a preponderance of the evidence that a defendant has inexcusably failed to comply with a condition of his or her probation, it may revoke the probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). The trial court's findings will be upheld unless they are clearly against the preponderance of the evidence; and, because the determination of a preponderance of the evidence turns on the questions of credibility and weight to be given testimony, on review, the appellate courts will defer to the trial judge's superior position. *Bedford*, supra. The State need only show that the appellant committed one violation in order to sustain a revocation. *See Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000). Evidence that may not be sufficient to convict can be sufficient to revoke due to the State's lower burden of proof. *Newborn v. State*, 91

Ark. App. 318, 210 S.W.3d 153 (2005).

The petition to revoke specifically stated that one of the written conditions of probation required appellant to report to his probation officer and comply with that officer's instructions and that appellant had failed to report and comply. The trial court found that appellant had failed to report and comply. Appellant does not challenge the trial court's findings of this probation violation, and our review of the record establishes that appellant admitted that he had failed to attend scheduled appointments with his probation officer. Because the State need only show that the appellant committed one violation in order to sustain a revocation, *see Brock, supra*, this allegation, appellant's admission and his failure to challenge that finding are sufficient to sustain the trial court's revocation of appellant's probation. Accordingly, we find no error and affirm.

Affirmed.

HART and ROBBINS, JJ., agree.